IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2006

CORAM

THE HON'BLE MR. JUSTICE P.SATHASIVAM
AND
THE HON'BLE MR. JUSTICE V.DHANAPALAN

W.P.No.11924 of 2001

B.Nageswara Rao ..Petitioner

vs.

1. The Commandant
Disciplinary Authority
Central Industrial Security Force
N.L.C. Unit, Neyveli

2. The Deputy Inspector General
Appellate Authority
Office of the Deputy Inspector General
Central Industrial Security Force (South Zone)
D Block, Rajaji Bhavan
Besant Nagar, Chennai 600 090

3. The Inspector General
Revisional Authority
Central Industrial Security Force
Head Quarters, South West Zone
R.C.F. Complex, Chamber 74, Mumbai ..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying this Court for issuance of a writ of certiorarified mandamus, call for the records and quash order No.V-15014/CISF/NLC/Disc/BNR/2000/5574 dated 10.07.2000 passed by the first respondent and confirmed by order No.V-11014/62/2K/L & R (SZ)/8569 dated 18.12.2000 and order No.V-11014/6/SZ/LC/SWS/01/3591 dated 26.05.2001 passed by the second and third respondents respectively and consequently direct the respondents to reinstate the petitioner as Constable with continuity of service, backwages and all other consequential benefits.

For Petitioner Ms.D.Nagasaila
for Mrs.Sudha Ramalingam

For Respondents Mr.N.Gnanalingam
for Mr.S.Krishnaswamy, CGSC

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O R D E R

(Order of the Court was made by V. DHANAPALAN, J.)

The petitioner has prayed for issuance of a writ of certiorarified mandamus for quashing the order dated 10.07.2000 of the first respondent removing him from service and also the consequential orders of the second and third respondents dated 18.12.2000 and 26.05.2001 confirming the order of the first respondent.

2. While the petitioner was working as a Constable in Central Industrial Security Force (hereinafter referred to as "the CISF"), a charge sheet dated 03.04.2000 was issued to him containing four charges. He gave an explanation dated 17.04.2000 to the said charge sheet, denying all the charges. The Enquiry Officer was appointed and he had also proceeded to conduct the enquiry without providing a Defence Assistant to the petitioner even though the latter had insisted for the same as per the CISF Rules, 1969 (hereinafter referred to as "the Rules"). At the enquiry, the petitioner was exonerated partially to the extent that the charge sheet was partially proved and he was found guilty of charge nos. 2, 3 and 4. Based on that, the Disciplinary Authority has imposed on him, the punishment of removal from service vide his proceedings dated 10.07.2000 against which the petitioner preferred an Appeal to the Deputy Inspector General, the appellate authority, namely the second respondent herein. In turn, the Appellate Authority also confirmed the order of the Disciplinary Authority vide his proceedings dated 18.12.2000. Subsequently, the petitioner preferred a Revision against the order of the Appellate Authority on 08.02.2001 and the same was dismissed by the Revisional Authority vide his order dated 26.05.2001. Challenging the above proceedings, the petitioner has filed the present writ petition.

3. According to the petitioner, he was appointed as a Constable in the CISF in the year 1985 and had put in 15 years of service and during his tenure, he was given two rewards and cash awards for his exemplary service. He had studied upto X standard in Telugu Medium and his mother tongue is Telugu. He knows a smattering of Tamil and Hindi and does not know English at all.

4. During February 2000, he was sent along with unit to Bihar, on election duty. Since Bihar was violence-prone, they were all issued arms and were asked to be alert round the clock, though they were working in shifts. It is the submission of the petitioner that when arms are issued, there are quarter guards provided to them and they would surrender their arms on completion of their service. However, at Bihar, since no quarterguard was provided, the arms issued to them were in their

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possession throughout. At the time of roll call, when there is a quarterguard, they generally attend the roll call after surrendering the weapons. The station where they were posted in did not have such a facility and hence, the CISF personnel were either carrying their arms with themselves or leaving the same in their rooms, according to their convenience.

5. The petitioner, on completion of his morning shift on 10.02.2000, though the shift was over, continued to be in his uniform since it was very cold, particularly for those who came from down South. Around 7 p.m., the roll call was called and the constables were trooping in to attend it. At that time, he was proceeding to attend the roll call in uniform carrying his arms and ammunitions. At that time, when he proceeded, he was stopped by S.A. Chatte, Inspector who asked him as to why he was loitering and the petitioner replied that he was going to attend the roll call. The Inspector objected to the carrying of arms and ammunitions to the roll call, to which the petitioner answered that it is his responsibility to safeguard the arms and ammunitions and therefore, he carried them. The Inspector, who was speaking in Marathi and was not very fluent in other languages, accused him of being under the influence of alcohol. The petitioner denied the same and said he could not efficiently perform his duties and if there was any threat or attack by any miscreants, he would not spare them and would kill them. Due to communication gap on account of language problem, these wordings of the petitioner were misunderstood by the Inspector as if he threatened to kill him. The said Inspector raised an alarm and other officers were called and he told them that the petitioner was drunk and was ready to point the rifle at him and kill him and hence, he should be relieved of his arms. Two or three constables immediately rushed to that spot and the petitioner handed over the arms and ammunitions to them.

6. On 11.02.2000, a movement order was issued to the petitioner to go back to the parent unit at NLC, Neyveli, Tamil Nadu and he was relieved from election duty and resumed duty at his parent unit. To his shock and surprise, a charge memo was issued to him on 03.04.2000 framing four charges against him which are as follows:

> Charge 1: No.854460195 Constable B.N. Rao is charged with gross misconduct in that while on election duty on 10.02.2000 at around 19 hours, he was found loitering in the camp area with his arms and ammunitions, instead of attending roll call. He was also found under influence of liquor.

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Charge 2: No.854460195 Constable B.N. Rao is charged with gross misbehaviour in that on having been pointed out about the above misconduct, he questioned the authority of the Coy. Commander Inspector/Exe S.A. Chatte and misbehaved with him.

Charge 3: No.854460195 Constable B.N. Rao is charged with gross misconduct and misbehaviour in that he threatened Inspector/Exe S.A. Chatte of dire consequency saying that "AC Lamba spoiled his career and future, now if you report this incident, I will shoot you". He also tried to fire upon the Inspector and kill him thereby.

Charge 4: No.854460195 Constable B.N. Rao is charged with gross misconduct in that he is found indulging in acts of misconduct and misbehaviour repeatedly. He has already been awarded six punishments for various acts of misconducts and misbehaviour but he has failed to improve his conduct which is most unbecoming for a Member of Force.

7. A preliminary hearing in departmental enquiry was done in which the petitioner was asked whether he wanted to produce any serving member of the Force as his Defence Witness and if so, he had to give his name in writing with a consent letter from him. To this question, he had answered that he wanted to take the assistance of Constable P.R.P. Rao of CISF Unit, NLC, Neyveli and he would submit his application together with the consent letter.

8. According to the petitioner, that enquiry was conducted without providing a Defence Assistant and enquiry report was submitted in the month of June 2000. In the said report, the Enquiry Officer has concluded that all the four charges are proved. Rebutting the same, the petitioner has submitted a representation on 01.07.2000 in which he has inter alia contended that the Disciplinary Authority was not satisfied with the finding of the Enquiry Officer in regard to the first charge and the report of the Enquiry Officer shows that he has not considered the petitioner's reply wilfully and acted partially and finally, without any material evidence, held that Articles of charges 1 to 4 are proved.

9. The petitioner has also questioned the procedural irregularity with regard to the conduct of enquiry proceedings and indicated that many of the Prosecution Witnessess did not state anything nor he asked anything with them and none of the Prosecution

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Witnesses of this case produced documentary evidence and the petitioner requested the Disciplinary Authority to look into the procedural flaw and wilful violation of framework of rules. It is also the case of the petitioner that he has lost his reasonable opportunity to defend his case properly.

10. The Disciplinary Authority, after going through the findings in the Enquiry Report and giving his attention to some of the material documents only to the extent of the charge sheet no.1, found that mere statement of P.W.1 is not sufficient to prove the allegation that the petitioner was under the influence of alcohol and in the absence of medical examination report, disagreed with the findings of the Enquiry Officer to that extent and held the Article of Charge 1 partially proved.

11. Whereas the Disciplinary Authority agreed to the findings of the charges 2,3 and 4 and in exercise of powers conferred on him under Rule 29A ,Schedule II of the Rules, awarded a penalty of removal from service to the petitioner. He further ordered that the period of his suspension from 08.03.2000 to the date of receipt of the order of removal will be treated as "not on duty" for all purposes and that he may prefer an appeal to DIG, CISF SZ, Headquarters within 30 days from the date of receipt of the order of punishment.

12. Aggrieved by the above punishment, the petitioner has preferred an appeal to the Deputy Inspector General, CISF, South Zone, Chennai, the second respondent herein, contending that he has not been provided with the assistance of any serving member of the Force as his Defence Assistant in the departmental enquiry which he had been insisting right from the date of the preliminary enquiry. He has also indicated in the appeal that the Enquiry Officer went on insisting him to obtain the consent letter from the Defence Assistant which is contrary to Rule 34 (5) of the Rules. The petitioner has further pointed out that the Disciplinary Authority had not appointed any Presenting Officer to present the case and therefore, the Enquiry Officer had himself played dual role of Presenting Officer and Enquiry Officer and thus, there was every possibility for the Enquiry Officer for coming to a conclusion and there was a chance for leading witnesses of prosecution according to the wish of the Enquiry Officer and therefore, his findings are perverse in nature. Though the charges were not proved, the appellate authority held them as proved.

13. Since he did not get any favourable order from the Appellate Authority, he has sent a reminder on

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09.12.2000 regarding his appeal dated 24.07.2000 narrating the same grounds as detailed in the appeal and prayed for early redressal of his grievance.

14. To the request of the petitioner to have P.R.P. Rao as his Defence Assistant, the Appellate Authority too has given his findings stating that since there was no consent letter, he was not provided with the Defence Assistant. With regard to the contention of the petitioner that no Presenting Officer was appointed, the Appellate Authority answered that there is no such provision under the Rules to appoint a Presenting Officer and the procedure followed by the Enquiry Officer would not amount to a pre-determined motive.

15. With regard to charges 2 and 3, the appellate authority had held that the averment that all the Prosecution Witnesses were subordinate to P.W.1. is baseless since P.W.1 had no hand in deciding the course of the Disciplinary Enquiry and the petitioner is not the competent person to decide whether to lodge a police complaint or to conduct disciplinary enquiry in a particular case. In reply to the contention of the petitioner that as per the provision of the Evidence Act, no past cases should be taken into consideration while dealing with fresh cases, the Appellate Authority has held that the petitioner is governed by the Rules and not by the Indian Evidence Act. In respect of not allowing the petitioner to cross-examine the Prosecution Witnesses, the Appellate Authority has stated that the petitioner had accepted and signed the proceedings before the Enquiry Officer and all other procedures have been followed by the Enquiry Officer based on which the Disciplinary Authority has imposed punishment proportionate to the gravity of the offences committed by the petitioner and accordingly, confirmed the order of the Disciplinary Authority.

16. Not satisfied with the order of the Appellate Authority, the petitioner has preferred a Revision to the Inspector General (Revisional Authority, CISF Headquarters), South West Zone, Mumbai on 08.02.2001, contending that the orders of the Disciplinary Authority as well as the Appellate Authority are violative of principles of natural justice as he was not provided with a Defence Assistant and had he been provided with a Defence Assistant, he would have defended the case effectively. In reply, the Revisional Authority also, in the same manner, as done by the Appellate Authority, by passing an order on 26.05.2001, concluded that the petitioner was afforded reasonable opportunity to defend his case and since the charges were held proved on the basis of evidence held on record, the punishment awarded by the Disciplinary Authority and upheld in the appeal by

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the Appellate Authority commensurate with the gravity of offence and thus, confirmed the orders of the Disciplinary Authority and Appellate Authority.

17. On the other hand, the first respondent, on behalf of the other respondents has filed counter and contended that the petitioner was commended of his good services but was not exemplary in service as claimed by him. According to the first respondent, when the Company is moving on internal security duty or election duty with 100% arms and ammunitions, the Company Commander used to make temporary arrangements at the camping area to deposit the arms and ammunitions and ensure armed guard detailed round the clock and the personnel other than on specific duty cannot carry the arms and ammunitions with them. During the evening roll call, they used to fall in even in civilian dress and not in uniform and hence, he denied the allegation of the petitioner that no such facility had been done in the Bihar election duty.

18. It is further contended that the Section Commander informed S.A. Chatte, the Inspector that the petitioner was roaming in the area in uniform with his arms and when it was questioned, the petitioner, in a loud voice, questioned the Inspector, pointing his fingers against him. Therefore, it is contended that the petitioner's behaviour with his senior was not proper and the petitioner was dealt with under Rule 34 the Rules for his indiscipline and misconduct and four Articles of charges were framed against him.

19. It is also the contention of the first respondent that at the time of enquiry, the petitioner was to choose Hindi or English language and as he hailed from Andhra Pradesh, English language was preferred and proceedings were conducted in English and he was afforded sufficient opportunity and during the preliminary enquiry, was asked to produce the consent letter from the Constable P.R.P. Rao but he failed to produce it.

20. It is the further case of the first respondent that the petitioner was a habitual defaulter to the roll-call and therefore, charges were framed and the order of removal from service was imposed on him and in such circumstances, the first respondent prayed that the petition has to be dismissed.

21. Ms.D.Nagasaila, learned counsel for the petitioner, in her submissions, has made a point that under Rule 34(5) of the Rules, providing a Defence Assistant to the departmental official is mandatory which is not done by the respondents and therefore, the non-adherence of the Rules vitiates the entire proceedings.

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22. The petitioner's counsel has assailed the order of punishment on various grounds, namely, that the impugned order of removal is violative of Articles 14, 16 and 21 of the Constitution of India inasmuch as the petitioner was denied a Defence Assistant to defend his case effectively and the respondents have failed to appreciate that the petitioner was not familiar with the English language in which the domestic enquiry was conducted and hence, he should have been provided a Defence Assistant of his choice. She has further submitted that the contention of the respondent that since the petitioner failed to produce the consent letter of the defence representative, he could be denied the Defence Assistant, is highly arbitrary and violative of Rule 34(5) of the Rules and the punishment imposed on the petitioner is grossly disproportionate to the charges framed.

23. It is specifically argued by the counsel for the petitioner that the reason explained by the petitioner for wearing uniform has not been considered by the respondents in any of the stages and the entire proceedings are vitiated by not providing Defence Assistant of the petitioner's choice.

24. In support of her contention, the learned counsel for the petitioner would rely on as many as nine decisions including those of the Supreme Court and other High Courts, which are discussed in detail in the latter paragraphs.

25. Per contra, the learned counsel for the respondents has strenuously contended that:

a. the procedure followed by the Enquiry Officer, Disciplinary Authority, Appellate Authority and the Revisional Authority are in conformity with the rules contemplated under the provisions of the CISF Act, 1968 and the Rules,

b. since Hindi and English were the languages in which the enquiry was to be conducted and as the petitioner hailed from Andhra Pradesh, the proceedings were conducted in English and the petitioner did not raise any objection on this point during the course of the enquiry and he signed the proceedings in token of having accepted the same,

c. the petitioner was awarded with some minor penalties and in such a situation, the order of punishment is in proportion to the charges levelled against him and as such, there is no infirmity with the findings of the authorities

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and therefore, the contention of the petitioner cannot be sustained and the writ petition has to be rejected.

26. In the light of the rival contentions raised by the counsel on either side, let us proceed to analyse whether the impugned order of removal from service is infirmed by procedural irregularity, in violation of principles of natural justice, disproportionate to charges and suffers from perversity and non-application of mind. Before doing so, we shall consider the various rulings of the Apex Court and other High Courts which have got more nexus and relevance to the facts and circumstances and the question involved in this case.

i. The Bombay High Court, in its judgment, reported in AIR 1954, Bombay 351 (Volume 41, C.N. 101) in the case of State of Bombay Vs. Gajanan Mahadev Badley,has observed as under:(para 6)

> "The Advocate General has attempted to argue that it is necessary for the servant to make a grievance that he has been deprived of a certain opportunity and it is only if he makes such a grievance and that grievance has not been removed that it would be open to the dismissed servant to complain in Court that reasonable opportunity was not given to him. That seems to us not to be the true view of the law.
>
> If a Government servant comes to Court and complains that his dismissal was wrongful and that reasonable opportunity was not given to him as required by the statute, it is for the State then to satisfy the Court that in fact reasonably opportunity was given to him. The requirement of the Government of India Act that reasonable opportunity should be given to the government servant does not depend upon the Government servant asking for it. it is a statutory protection that is afforded to the servant and a statutory obligation cast upon the State and the State has got to discharge that obligation irrespective of whether the protection is claimed or not claimed by the servant.
>
> If the Court holds that reasonable opportunity was not given, the order of dismissal must be set aside and the Court cannot be influenced by the consideration that the dismissed servant did not ask for a reasonable opportunity. . ."

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ii. In a case reported in AIR 1964 SC 477 (V 51 C 59) in the case of Syed Yakoob Vs. K.S. Radhakrishnan & Others, a Constitution Bench of the Supreme Court, has held as under: (para 7)

> "The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding."

iii. The Supreme Court has held in the case of C.L. Subramaniam Vs. The Collector of Customs reported in AIR 1972 SC 2178 (V. 59 C 141), as under: (para 22)

> "It is needless to say that R.15 is a mandatory rule. That rule regulates the

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guarantee given to Government servants under Article 311. Government servant by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation, he cannot be expected to act calmly and with deliberation. That is why, Rule15(5) has provided for representation of a Government servant charged with dereliction of duty or with contravention of the rule by another Government servant or in appropriate cases by a legal practitioner."

iv. In yet another decision of the Supreme Court, in the case of The Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni & Others reported in AIR 1983 SC 109, it was held as under: (paras 12 & 13)

". . . The order of the domestic tribunal was sought to be sustained on the submission that sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules 1957 lays that ". . . The Government servant may present his case with the assistance of any Government servant approved by the Disciplinary Authority but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits." . . .The earlier cases of this Court were distinguished. In our view, we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal, the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. This view has been taken by a learned single Judge and while

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dismissing the appeal in limine approved by the Division Bench of the High Court commends to us. Therefore, this appeal is liable to be dismissed.

. . . In our opinion, that is hardly relevant. The unjustly refused request was already there and obligation under the regulation coupled with fairplay in action demanded that the employer should have suo motu reviewed his order refusing the request. In fact, one can go so far as to say that the Enquiry Officer in order to be fair and just, whenever he finds the employer appointing legally trained persons as Presenting-cum-Prosecuting Officers must enquire from the delinquent employee before commencement of enquiry whether he would like to take assistance of a legal practitioner. The option then is with the delinquent employee."

v. In the case of Bhagat Ram Vs. State of Himachal Pradesh & Others reported in AIR 1983 SC 454, the Supreme Court has observed as below: (para 5)

". . .In fact, justice and fairplay demand that where in a disciplinary proceeding, the department is represented by a Presenting Officer, it would be incumbent upon the Disciplinary Authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate, the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him."

vi. In a decision reported in 1986 LAB I.C. 980 in the case of P.P. Gopalan Vs. The D.I.G. & another, the Kerala High Court has held as under: (paras 3 & 7)

"Rule 34 of the Rules prescribes the procedure for imposing major penalties. The

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rules require a fair and reasonable opportunity to be afforded to the delinquent officer for his proper defence, including inspection of records, cross-examination of witnesses examined on behalf of the prosecution and also to examine defence witnesses on his behalf. sub-rule (5) of R.34 is extracted below:

> "(5) The member of the Force so charged may be permitted by the Inquiring Authority referred to above to present his case with the assistance of any other member of the Force approved by it."

There is no dispute that the petitioner is a last grade employee who cannot be expected to be familiar with the procedure prescribed by the Rules for the conduct of the enquiry on the charges framed against him. The enquiry was conducted by an Assistant Commandant, an officer of the Department who has, as can be seen from the enquiry report Ext. P2 acted also as the prosecutor. He was therefore the prosecutor and Judge rolled into one. he confesses in Ext.P.2 that the witnesses examined on behalf of the prosecution when found supporting the version of the delinquent officer were treated as hostile and cross-examined by himself."

vii. The Bombay High Court, in its decision reported in 1990 1 LLN 558 in the case of Murlidhar Sitaram Rane Vs. State of Maharashtra, has observed as under: (para 16)

> ". . .Under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, which I have cited heretofore, the petitioner was entitled to have a person of his own choice for the purpose of assistance during the enquiry. Assuming that he was not required to take permission, even so, he did apply to the enquiry officer for his permission and that permission was refused by the enquiry officer twice. Consequently throughout the enquiry, which lasted for a year and eight months, the petitioner went without any assistance and conducted his defence, throughout. I am, therefore, of the view that Sri. Kochar is justified in his submission that the conduct of the enquiry officer was inconsistent with the

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rules of natural justice and that clearly an essential rule of natural justice had been violated apart from the fact that even rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, had been breached."

viii. In its decision reported in (1990) 3 SCC 223 in the case of Shri Sitaram Sugar Company Limited & Another Vs. Union of India & Others, a Constitution Bench of the Supreme Court has held as under: (para 49)

"Where a question of law is at issue, the Court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the Court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trier of fact.. . ."

ix. The Supreme Court, in its decision reported in (2003) 6 SCC 416 in the case of Trambak Rubber Industries Limited Vs. Nashik Workers Union & Others, has observed as follows: (para 6)

"The High Court, conscious of its limitations under Articles 226/227 of the Constitution of India, went into the question whether the conclusions reached by the Industrial Court were legally sustainable. Incidentally, it went into the question whether the Industrial Court ignored the material evidence on record. The one and only view that could be taken on the basis of the evidence on record, according to the High Court, is that the persons concerned whose engagement was terminated were not trainees but they were "workmen" and therefore, their services could not have been terminated without following the due procedure. The High Court

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held that the action taken by the management was an unfair labour practice within the meaning of the Act and directed reinstatement without back-wages."

27. A careful reading of the above decisions would reveal that when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. In such a situation, he cannot be expected to act calmly and with deliberation. That is why, Rule 15(5) has provided for representation of a Government servant charged with dereliction of duty or with contravention of the rule, by another Government servant or in appropriate cases, by a legal practitioner.

28. In the instant case, there is a clear violation of a rule prescribed for proper enquiry by not giving an opportunity to the petitioner to defend his case effectively and this has made the entire prosecution of the departmental proceedings and its consequential orders infirmed.

29. We have carefully gone through the various documents filed in support of the petitioner and the respondents as well and upon perusing the enquiry proceedings and the orders of the Disciplinary Authority, Appellate Authority and Revisional Authority, it is necessary to decide whether the impugned proceedings challenged herein are in conformity with the rule of law or in breach of the same and if so, whether the punishment of removal from service warrants any interference from this Court.

30. It is not in dispute that the respondents have not provided a Defence Assistant to the petitioner which is in violation of Rule 34(5) of the Rules for the reason that the petitioner has not obtained the consent letter from the Defence Assistant of his choice. It is also not in dispute that among four charges framed against the petitioner, the Disciplinary Authority has disagreed with the findings of the Enquiry Officer in respect of the first charge and since the first charge was proved only partially, he had held that the petitioner was not under the influence of liquor.

31. Based on the above, we can come to a conclusion that the Appellate Authority and the Revisional Authority have not applied their mind to set right the defect in the disciplinary proceedings and instead, they have confirmed the order of the Disciplinary Authority without applying their mind.

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32. Further, the contention of the respondents that despite the provision of a temporary quarterguard, the petitioner continued to carry the arms and ammunitions with him, cannot be accepted since no prudent person will be inclined to carry such a heavy weight throughout, had there really been a temporary quarterguard at least.

33. It is also observed that before imposing the major punishment of removal from service, the respondents have not considered the explanation of the petitioner that he continued to wear his uniform even after duty hours only for keeping his body warm, with a view to protect himself from the severe cold weather in the month of February. This explanation of the petitioner could have very well been considered since he is hailing from an area down South.

34. With regard to the charge that he was repeatedly found involved in misbehaviour, on a careful scrutiny of the orders passed in different stages, it is seen that the Disciplinary Authority, Appellate Authority and the Revisional Authority have not applied their mind to interfere with the findings of the Enquiry Officer as well as the authorities below each of them to set right the discrepancy right from its origin. In that view of the matter, the impugned orders suffer from procedural irregularity, perversity and more so, with non-compliance of principles of natural justice inasmuch as not providing a Defence Assistant to the petitioner as contemplated under Rule 34(5) of the Rules which has vitiated the entire proceedings and therefore, they have to be interfered with.

35. On a careful scrutiny of the entire materials placed before us and in view of what is discussed above, we are of the considered view that the impugned order of removal from service by the first respondent and the consequential orders of the second and third respondents are liable to be quashed and accordingly, they are quashed.

36. In the normal course, we would have remitted the matter back to the respondents for fresh consideration by them from the stage where the discrepancy crept in. However, after considering the nature of allegations and some of the conclusions arrived at by the Enquiry Officer without providing a Defence Assistant to the petitioner, we feel that ends of justice would not be met by dragging on the matter, any further. Further, we are of the opinion that, the allegations, even if proved, do not call for any severe punishment muchless the removal of the petitioner from his service.

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For the above stated reasons, the order of the first respondent dated 10.07.2000 removing the petitioner from service and the consequential orders of the second and third respondents dated 18.12.2000 and 26.05.2001 respectively are quashed. In view of our reasons in paragraph 36, the petitioner is not entitled to backwages. However, the said period is to be counted for all service benefits. The writ petition is allowed to this extent. No costs.

cad

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commandant
   Disciplinary Authority
   Central Industrial Security Force
   N.L.C. Unit, Neyveli

2. The Deputy Inspector General
   Appellate Authority
   Office of the Deputy Inspector General
   Central Industrial Security Force (South Zone)
   D Block, Rajaji Bhavan
   Besant Nagar, Chennai 600 090

3. The Inspector General
   Revisional Authority
   Central Industrial Security Force
   Head Quarters, South West Zone
   R.C.F. Complex, Chamber 74, Mumbai

+ one cc to Mr.D.Nagasaila, Sr.No.31227.
+ one cc to Mr.S.Krishnaswamy, SCGC, Sr.No.30960.

HPR (CO)
RSM/25.7.2006

Pre-delivery order in
W.P.No.11924 of 2001

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